

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:06cv296**

<b>UNITRIN AUTO AND HOME INSURANCE COMPANY,</b>	)	
	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>TAMI STEPHEN; JOSEPH BOYER; and BARBARA CANDLER,</b>	)	
	)	
	)	
<b>Defendants.</b>	)	
	)	

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**THIS MATTER** is before the court on the Candler defendants' Motion to Dismiss and/or Stay Action. In response to such motion, plaintiff states that it agrees to the proposed stay and that a joint Motion to Stay is circulating.

The parties are advised that neither the undersigned nor the district court typically stays matters and it is fully expected that all actions on the civil docket will be resolved within one year from joinder of issues. Staying this matter until conclusion of discovery is a state court matter in Florida may take years. Further, the district court has made clear what it expects in similar Declaratory Judgment actions:

Indeed, the Supreme Court has recently stated that . . . "at least where another suit involving the same parties and presenting opportunities for ventilation of the same state law issues is pending in state court, a district court might be indulging in 'gratuitous interference,' if it permitted the federal declaratory judgment action to proceed."

Hartford Cas. Ins. Co. v. BB & T Financial Corp., 131 F.Supp.2d 752, 754 (W.D.N.C. 2001)(citation omitted).

In allowing the stay in Hartford, and applying the four factors provided in Nautilus Ins. Co. V. Winchester Homes, Inc., 15 F.3d 371 (4<sup>th</sup> Cir. 1994), the court had before it a factor that is apparently not present here: the state court in South Carolina court had before it the issue of whether the insurance policy provided coverage. This concerns the undersigned inasmuch as it is clear that this claim could have been well made in the Florida action, which is a pure simple negligence complaint. A hearing will be calendared on defendants' Motion to Dismiss and/or Stay Action.

## ORDER

**IT IS, THEREFORE, ORDERED** that the Candler defendants' Motion to Dismiss and/or Stay Action (#8) is **CALENDARED** for hearing on November 30, 2006, at 2 p.m. in Asheville. The Clerk is hereby directed to forward by first class mail a copy of this Order to the Defendant Tami Stephen at the address of 19 Driver Lane, Burnsville, N.C. 28714.

Signed: November 13, 2006

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

